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SUPREME COURT, U.S.

No. 06-517

IN THE

Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE COMPANY;
TYNDALL PARTNERS, LP; and TYNDALL
INSTITUTIONAL PARTNERS, LP,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether section 502(b) of the Bankruptcy Code requires that, with respect to a claim consisting of principal and interest arising from an interest-bearing obligation, the principal amount of the claim must be discounted to present value where the bankruptcy court has already disallowed unmatured interest on the same claim under section 502(b)(2) of the Code.

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PRELIMINARY STATEMENT

Petitioner is the indenture trustee for holders of certain unsecured notes issued by Oakwood Homes Corporation ("Oakwood"). Petitioner objected to proofs of claim filed in Oakwood's chapter 11 bankruptcy case by a different indenture trustee on behalf of a group of creditors that advanced approximately $95.5 million to certain third-party, non-debtor trusts that Oakwood created. In exchange for these advances, the trusts issued interest-bearing certificates to these creditors, including Respondents, obligating the trusts to repay the advances plus interest over time. Oakwood guaranteed the trusts' principal and interest obligations under the certificates and the trusts could not meet their obligations.

After Petitioner objected to these proofs of claim, the bankruptcy court disallowed the unmatured interest portion of the claims under section 502(b)(2) of the Bankruptcy Code and also ruled that the principal amount of the claims must be "discounted to present value"(thereby reducing the aggregate principal amount from $95.5 million to $25.3 million) on the ground that Oakwood was obligated to make its principal payments in installments over time. The district court affirmed. In the decision below, the Third Circuit reversed and directed that the principal portion of the claims be allowed in full.

The decision below provides no occasion for certiorari review. First, notwithstanding Petitioner's efforts to manufacture a split of authority among the circuit courts, there is none. Critically, and as the decision below explicitly recognizes, Petitioner could not – and still cannot – cite *any* case in which a court has required the principal amount of a claim on an interest-bearing obligation to be discounted to present value under section 502(b) where, as here, the court has already disallowed unmatured interest on the same claim under section 502(b)(2).

Second, contrary to Petitioner's contentions, the decision below is fully consistent with this Court's precedents concerning the proper interpretation of the provisions and policies of the Bankruptcy Code. Third, the decision below correctly held that section 502(b) does not require that the principal portion of claims

on interest-bearing obligations be discounted to present value after unmatured interest has been disallowed under section 502(b)(2) and that such discounting would be inequitable. Finally, the Petition presents no issue of extraordinary public importance warranting this Court's intervention. In sum, the Petition presents no certworthy issue and should be denied.

STATEMENT OF THE CASE

This matter arises out of Oakwood's chapter 11 bankruptcy case. Petitioner is U.S. Bank National Association ("US Bank"), indenture trustee for holders of certain unsecured notes issued by Oakwood. Petitioner objected to proofs of claim filed in Oakwood's chapter 11 case by JPMorgan Chase Bank, as indenture trustee ("JPMorgan"), on behalf of a group of creditors including Jefferson-Pilot Life Insurance Company, Jefferson-Pilot Financial Insurance Company, Tyndall Partners, LP, and Tyndall Institutional Partners, LP (collectively with JPMorgan, "Respondents"). Respondents (together with certain other creditors that settled during the proceedings in the Third Circuit) advanced approximately $95.5 million to certain third-party, non-debtor trusts created by Oakwood. In exchange for these advances, the trusts issued interest-bearing certificates to Respondents, obligating the trusts to repay the advances plus interest over time. Oakwood guaranteed the trusts' principal and interest obligations under the certificates.

The Securitization Transactions

Prior to filing its chapter 11 case on November 15, 2003 ("Petition Date"), Oakwood was in the business of designing, manufacturing, and selling modular homes to consumers. Pet. App. 4, 59. Oakwood operated several wholly owned subsidiaries, including Oakwood Acceptance Corporation, LLC ("OAC") and Oakwood Mortgage Investors, Inc. ("OMI"). *Id.*

OAC was in the business of financing purchases of Oakwood's homes. App.[1] 579. To purchase a home on credit, a consumer would execute a retail installment contract ("RIC"), pursuant to which the consumer agreed to pay the purchase price in installments over a period of up to thirty years. OMI "securitized" these RICs – i.e., OMI bundled together groups of RICs and sold them to certain real estate mortgage investment conduit securitization trusts ("REMIC trusts"). OMI created the REMIC trusts specifically for the purpose of buying the RICs that OAC generated. The securitization process allowed Oakwood to "cash out" the value of the bundled RICs by selling them to the REMIC trusts, thereby converting the consumers' long-term payment obligations into current cash. Pet. App. 4-6, 59-60.

OMI established each REMIC trust under the terms of a pooling and servicing agreement entered into by OMI, OAC, and a trustee for each trust ("Pooling Agreement"). As a result of the sale of the RICs to the REMIC trusts, the trusts became the owners of the RICs and thus became entitled to receive the installment payments that the consumers were obligated to make under the RICs. Pet. App. 4-6, 59-60, 68; App. 50-51, 579. To pay for the RICs, each REMIC trust borrowed money in the marketplace by issuing certificates to investors who, in exchange for the certificates, advanced money to the issuing trusts. The certificates obligated the trusts to repay the investors' cash advances by paying the investors principal and interest periodically over time. Pet. App. 4-6, 59-60, 68, 579. Each REMIC trust issued certificates in various "tranches," each with a different payment priority, meaning that certain tranches of certificates have the right to be paid from the trust's assets ahead of others. To induce investors to advance funds in exchange for the certificates with the lowest payment priority (the riskiest certificates), Oakwood guaranteed principal and interest payments due investors (such as

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[1] All references herein to "App." are to the Appendix filed in the Third Circuit.

Respondents) who acquired these low-priority certificates. Pet. App. 5-6, 60, 68, 130.

The Advances, B-2 Certificates, And Limited Guarantees

Respondents (together with certain other creditors that settled during the proceedings in the Third Circuit) advanced approximately $95.5 million to purchase low-priority, interest-bearing certificates issued by eight REMIC trusts ("Trusts"). These certificates ("B-2 Certificates") have an aggregate "face" (principal) amount of approximately $98.7 million and require the Trusts to pay this amount as principal and an additional amount of interest.[2] Oakwood, in turn, guaranteed the payment of principal and interest under the B-2 Certificates pursuant to certain Limited Guarantees ("Guarantees"). Pet. App. 5-6, 60, 68; App. 44-48, 579. Each Trust issued its B-2 Certificates pursuant to a trust indenture agreement between the issuing Trust and an indenture trustee representing the certificate holders.

The structure of the securitization transactions reveals that the parties contemplated that consumers who purchased homes on credit would make principal and interest payments due on their RICs to the Trusts (because the Trusts had purchased their RICs). In turn, the Trusts would pay principal and interest to the B-2 Certificates holders from amounts they received from the consumers. Both before and after the Petition Date, however, many consumers failed to make their installment payments under

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[2] The face amount of the B-2 Certificates is approximately $98.7 million, for which the holders of the B-2 Certificates that appealed the Claims Orders paid a total of approximately $95.5 million (approximately 89.8 to 99.9 cents for each dollar of face amount). App. 142 (showing prices paid for each series of B-2 Certificates). The face amount is greater than the price paid because the interest offered on the certificates was inadequate to compensate for the risks associated with them. The market discounted the price to reflect this inadequacy at the time Respondents acquired their B-2 Certificates.

the RICs. The Trusts thus lacked the funds necessary to pay the principal and interest due under the B-2 Certificates and Oakwood became obligated to make up the shortfalls under its Guarantees.

The Guarantees And Oakwood's Obligations

Each Guarantee provides that Oakwood "hereby unconditionally and absolutely guarantees the full and prompt payment to the [trustee of the particular Trust] on or prior to the Remittance Date relating to each Distribution Date [the date the trustee is supposed to make periodic payments to Respondents under the B-2 Certificates] of the Limited Guarantee Amount (as defined in the Pooling Agreements)." Pet. App. 5-6, 12-13; App. 44. The Pooling Agreements define this amount as follows: 'Limited Guarantee Payment Amount': "With respect to any Distribution Date, the amount . . . equal to the amount of shortfalls in collections on the Assets [including the RICs] otherwise distributable on such Distribution Date . . . ." Pet. App. 5, 13.

Each Guarantee provides: "This is a guaranty of payment and not of collection." App. 45-46. *See Minority Equity Capital Corp. v. Weinstein (In re Weinstein)*, 31 B.R. 804, 811-12 (Bankr. E.D.N.Y. 1983) (one who guarantees "payment" is absolutely liable to make payment upon default by the principal; one who guarantees "collection" incurs only a conditional liability after all attempts to obtain payment from the principal have failed); RESTATEMENT 3D OF SURETYSHIP & GUARANTY, § 15(b) (ALI 1996) ("guaranty of collection" triggers liability only after collection efforts have failed).

It is undisputed that: (1) the Guarantees require Oakwood to make up any shortfalls in amounts necessary to make the principal and interest payments required under the B-2 Certificates; (2) the Trusts will not generate sufficient cash flows to make these payments; (3) as a result of past, current, and future shortfalls of principal and interest, Oakwood's obligations under the Guarantees have been and will continue to be triggered; and (4) Oakwood has not honored its obligations under the Guarantees to fund the shortfalls. Pet. App. 4-6, 12-13; App. 44-48, 573-74, 137-40, 632-38.

Respondents' Claims

When a debtor such as Oakwood commences a bankruptcy case, a bankruptcy estate is created consisting of all of the debtor's property. 11 U.S.C. §§ 103(a) & 541(a). A debtor's monetary obligations to creditors constitute "claims" against the bankruptcy estate. 11 U.S.C. §§ 101(5) & 502(b). Creditors holding rights to payment against the debtor, whether due presently or in the future, are entitled to file a "proof of claim" with the bankruptcy court. 11 U.S.C. §§ 101(10) & 501(a); Fed. R. Bankr. P. 3003. Creditors filing proofs of claim may be entitled to distributions (to the extent available) from the bankruptcy estate. Only creditors that file proofs of claim are entitled to distributions, *see* Fed. R. Bankr. P. 3003(c)(2), and then only to the extent that their claims are "allowed," *see Johns v. Rousseau Mortgage Corp. (In re Johns)*, 37 F.3d 1021, 1023 n.1 (3d Cir. 1994) (citing 11 U.S.C. § 502(a)).

A filed claim is "allowed" automatically if no party in interest objects. 11 U.S.C. § 502(a). If an objection to a claim is filed, however, the bankruptcy court must resolve the objection and either allow or disallow the claim under section 502(b). Specifically, section 502(b) directs that, if an objection to a claim has been filed, the court "shall determine the amount of such claim . . . as of the date of the filing of the petition, except to the extent that [one of the exceptions to allowance listed in section 502(b) applies]." 11 U.S.C. § 502(b).

For bankruptcy purposes, Respondents' guaranty claims against Oakwood ("Claims") consist of three components: (1) interest shortfalls accruing before Oakwood filed for bankruptcy; (2) interest shortfalls accruing after Oakwood filed for bankruptcy; and (3) principal shortfalls. Under applicable bankruptcy law, claims for interest accruing before a debtor files for bankruptcy (i.e., claims for "prepetition" interest) are allowable. *E.g.*, *Vaillancourt v. Marlow (In re Vaillancourt)*, 197 B.R. 464, 465-66 (Bankr. M.D. Pa. 1996). The bankruptcy court allowed the prepetition interest component of the Claims and this aspect of the Claims Orders is not at issue here. Pet. App. 7-8. A claim for interest accruing after a debtor files for bankruptcy ("postpetition" interest) is disallowed to the extent that "such claim

is for unmatured interest." 11 U.S.C. § 502(b)(2). "Unmatured" interest means postpetition interest that has not yet accrued (matured) at the time the debtor files for bankruptcy. *E.g.*, *In re Pharmadyne Labs., Inc.*, 53 B.R. 517, 522 (Bankr. D.N.J. 1985). The bankruptcy court disallowed the postpetition interest component of the Claims and this aspect of the Claims Orders is not at issue here.

The issue is the bankruptcy court's treatment of the principal component of the Claims, the principal that Respondents (and other settling creditors) advanced that the Trusts have not repaid and that Oakwood is obligated to pay under its Guarantees ("Principal Claims"). Under applicable bankruptcy law, Respondents are entitled to assert the full amount of their Principal Claims against Oakwood and to receive a distribution from Oakwood's bankruptcy estate based on this amount.

JPMorgan filed Amended Proofs of Claim with the bankruptcy court on behalf of the holders of the B-2 Certificates (including Respondents) for Oakwood's failure to satisfy its obligations under its Guarantees. The parties stipulated to the amount of principal shortfalls. Pet. App. 7.

The Claims Objections

US Bank objected to the Claims in separate filings ("Claims Objections"). US Bank's motivation in filing its Claims Objections was to reduce the amount of the Claims so that it could recover a greater amount on its own claims; i.e., the less Respondents receive, the more US Bank will receive.

As is relevant here, US Bank sought disallowance of the Claims to the extent that they included (1) postpetition interest shortfalls and (2) principal shortfalls due in the future that were not discounted to present value at a maximum rate of 20%. JPMorgan, on behalf of the holders of B-2 Certificates, filed separate responses to the Claims Objections.

The Claims Orders

The bankruptcy court ruled that Respondents' claims for postpetition interest must be disallowed under section 502(b)(2), and that the Principal Claims must be "discounted to present

value" on the theory that Oakwood was obligated to make principal payments in the future as each shortfall arose. Pet. App. 7. In so doing, the court rejected JPMorgan's argument that discounting the principal shortfalls to present value while at the same time disallowing the postpetition interest shortfalls constitutes an impermissible "double discounting" of the Claims. App. 152-57. Using a discount rate of 7.74% (the rate is not at issue here), the Principal Claims in the aggregate amount of $95.5 million have a "present value" of $25,337,168. On May 6, 2004, the bankruptcy court entered its Claims Orders, granting in part, and denying, in part, the Claims Objections, and reflecting these rulings. Pet. App. 7-8.

The District Court's Decision On Appeal

Respondents timely appealed the Claims Orders to the district court, which issued a memorandum and order affirming the Claims Orders. Pet. App. 58-65. The court ruled that the Claims Orders are supported by "a plain reading of section 502(b)" and that "section 502(b)'s language clearly and unambiguously required the bankruptcy court to both discount the [Principal Claims] to present value and to exclude post-petition interest." *Id.* at 62-63. According to the district court, this result is "not at odds with the overarching purposes of the Bankruptcy Code" because the B-2 Certificates "are certificates for future payments." *Id.* at 63. The court stated that the parties stipulated that principal payments arise in the future and that, "[i]n effect, the parties stipulated that the REMIC Trusts are not liable for the full principal upon filing, and thus the full principal is not accelerated." *Id.* On this basis, the court concluded that Oakwood, as the guarantor of the Trusts, "cannot be held liable for the full principal upon filing." *Id.*

While noting that the bankruptcy court did not state the basis for its Claims Orders, the district court found persuasive *In re Loewen Group, Int'l*, 274 B.R. 427 (Bankr. D. Del. 2002), in which the same bankruptcy court concluded that section 502(b) requires that claims for principal be discounted to present value as of the petition date. Pet. App. 63-64. The district court rejected Respondents' argument that *Loewen* is distinguishable because the claims that were discounted to present value in that case were non-

interest bearing, stating that it was "not persuaded that the distinction between interest-bearing and non-interest-bearing claims is significant to the issue at bar." *Id.*

The Third Circuit's Decision

The Third Circuit consolidated three appeals challenging the district court's affirmance of the Claims Orders. During the pendency of the appeals, the parties to one appeal settled, leaving the Third Circuit to decide the two appeals filed by Respondents.

In reversing the district court's decision, the Third Circuit first examined the operative documents, concluding that the Claims involve separable interest and principal components, and not merely 'a singular future liability" that could properly be discounted to present value. Pet. App. 12-14. Rejecting US Bank's contrary arguments, the court held that "[t]he fact that the claims here arise only because of Oakwood's obligations under the Guarantee does not change the fundamental economic nature of the B-2 Certificate holders' bargained-for transaction." *Id.* at 12. The court reasoned that the Guarantee required Oakwood to make principal and interest payments in the event of any shortfalls, and thus placed Oakwood in the same position as the Trusts with respect to the obligation to make such payments, and that both the bankruptcy court's approach to the Claims and "U.S. Bank's own litigation strategy and admissions" support the conclusion that the Claims involve separable components. *Id.* at 12-14. The court concluded that, "as a matter of economics," the Claims comprise distinct principal and interest components. *Id.* at 14.

The Third Circuit next rejected US Bank's contention that section 502(b) clearly and unambiguously requires that "claims," as broadly defined in section 101(5), be discounted to present value, even after interest has been disallowed under section 502(b)(2). Pet. App. 18-23. In so doing, the court examined the plain language of these provisions, while taking a holistic approach to their construction, as mandated by this Court in *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Comparing the text of section 502(b), which "speaks in terms of determining the 'amount' of a claim 'as of' the petition date," with provisions of the Bankruptcy Code that use the

term "value, as of" to refer to discounting to present value, the Third Circuit observed that, while US Bank had correctly noted that Code provisions that use the term "value" refer to "the process by which holders of already-allowed claims are paid from the bankruptcy estate," the same provisions "also refer to the discounting of future cash *installment payments*, to present value – virtually the exact financial situation we address today," Pet. App. 21, and that US Bank had conceded that "'amount' does not mean the same thing as 'value,'" *id.* at 19. The court concluded that "amount" and "value" are not synonyms, and that section 502(b) does not clearly and unambiguously require present-value discounting, as do other sections of the Code. *Id.* at 21.

The court held that "[o]nce the Bankruptcy Court disallowed post-petition interest pursuant to § 502(b), the legislative history of the provision, the economic reality of the transaction, and fundamental tenets of bankruptcy law do not permit further discounting of the principal." Pet. App. 23. Reasoning that, "[b]y its terms, 11 U.S.C. § 502(b)(2), applies only to claims involving interest in addition to principal," and noting that no case had been cited that applied discounting to an interest-bearing obligation after unmatured interest had been disallowed under section 502(b)(2), the court concluded that the distinction between interest-bearing and non-interest-bearing claims is "highly significant," and that "[t]o the extent that the Code in any way contemplates discounting to present value, such discounting is *not permitted* where the claim is for principal plus interest, and the interest has already been disallowed pursuant to § 502(b)(2)." *Id.* at 26.

The court determined that, "[a]s a matter of economics, the legislative history recognizes that it is irrelevant whether a court applies § 502(b)(2) to disallow unmatured interest, or discounts the *entire amount* (i.e., principal plus interest) to present value – as long as the court performs only *one* such operation and not both, the result is the same." Pet. App. 26 (footnote omitted). The majority held that "both disallowing post-petition interest and discounting the claim to present value would be impermissible . . . double discounting." *Id.* at 11. In addition, the court (including the dissenting judge) concluded that double discounting would be

inequitable. *Id.* "The point is to recognize what the creditor bargained for, while avoiding a windfall." *Id.* at 27. Emphasizing that its holding does not yield a windfall for creditors in the position of the B-2 Certificate holders here, the court explained:

> Instead, the interplay between § 502(b) and § 502(b)(2), as reflected in both the legislative history and basic economics, acknowledges that once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money. We wholeheartedly agree that future liabilities must be reduced in some way to reflect the time value of money, but doing so twice is the "double discounting complained of by JPMorgan in this case.

Pet. App. 28.

The court rejected the "near-total" but "misplaced" reliance of US Bank and the district court upon *In re Loewen.* Pet. App. 28. The court disagreed with the *Loewen* court's "baseline conclusion" that section 502(b) is clear and unambiguous with respect to the question presented and rejected the analysis of the bankruptcy court in *Loewen, see id.*, and of the dissenting judge in this case, *id.* at 29-31 & nn.18, 19. Criticizing US Bank and the district court for asserting incorrectly that the obligations at issue in *Loewen* were interest-bearing, the court distinguished *Loewen* from the instant case on the ground that, in contrast to the contracting parties in *Loewen*, the B-2 Certificate holders here bargained for the right to receive interest payments. *Id.* at 28-29 n.17.

REASONS FOR DENYING THE PETITION

The Petition challenges the Third Circuit's holding that claims arising from interest-bearing obligations should not be discounted to present value under section 502(b) after unmatured interest has been disallowed pursuant to section 502(b)(2). The Petition provides no basis for certiorari review and should be denied.

First, the decision below does not conflict with a decision of any other court of appeals on the question presented. As the Third Circuit noted, no decision cited by US Bank holds that section 502(b) requires that the principal amount of a claim on an interest-

bearing obligation must be discounted to present value where, as here, the court has already disallowed unmatured interest on the same claim under section 502(b)(2). The decisions cited by US Bank that have allowed present-value discounting are inapposite, as they involve *non*-interest bearing obligations and do not even address the question presented here.

Second, contrary to Petitioner's contentions, the decision below is fully consistent with this Court's precedents concerning the proper interpretation of the provisions and policies of the Bankruptcy Code. A century of bankruptcy law holds that a creditor is entitled to the full principal amount of its guaranty claim against a bankrupt guarantor and no provision of the Bankruptcy Code changes that. Section 502(b) says nothing about present-value discounting and does not authorize, let alone require, the discounting of the Principal Claims. Moreover, when Congress wishes to authorize discounting, it uses language very different from that used in the text of section 502(b). Construing section 502(b)(2) to authorize present-value discounting of the principal amount of a claim on an interest-bearing obligation also would violate the canons of construction by rendering section 502(b)(2) superfluous. In addition, under the statutory predecessors to section 502(b), discounting was not authorized except for *non*-interest bearing obligations, and when Congress enacted section 502(b), it discontinued any authorization for discounting and also explained in the legislative history that discounting was not authorized. Discounting the Principal Claims also violates the Code's policy of equality of distribution. Furthermore, permitting present-value discounting of principal under section 502(b) is fundamentally unfair; imposes an unwarranted administrative burden on the bankruptcy courts; and creates a perverse incentive for guarantors to commence bankruptcy proceedings. The decision below presents no intolerable conflict with this Court's precedents.

Third, the principles articulated in the applicable precedents of this Court also demonstrate that the decision below correctly decided the question presented. Finally, the Petition presents no issue of extraordinary public importance warranting this Court's intervention. The Petition should be denied.

A. The Decision Below Does Not Conflict With A Decision Of Any Court Of Appeals On The Question Presented.

US Bank asserts that the decision below conflicts with decisions of the Sixth and Tenth Circuits that, according to US Bank, hold that section 502(b) requires that all future claims be discounted to present value. Pet. 12-13. US Bank is wrong.

US Bank must and does concede that the cases it cites in support of this contention are distinct from the instant case in that they address only *non*-interest-bearing future obligations, whereas this case concerns interest-bearing future obligations. Pet. 13. Indeed, when pressed by the Third Circuit at oral argument, US Bank could not cite a single case from *any* court that applied present-value discounting to an interest-bearing obligation after the unmatured interest had been disallowed under section 502(b)(2). Pet. App. 23-24. The Petition references no such cases. Yet US Bank boldly asserts that this is a "distinction without a difference" because there exists "no reasoned way" to distinguish between interest-bearing and non-interest-bearing claims for purposes of discounting the principal. Pet. 13. This is false and misrepresents both Respondents' arguments and the Third Circuit's holding.

The Third Circuit considered at length the distinction between interest-bearing and non-interest-bearing obligations, concluding that the difference is "highly significant." Pet. App. 23. The court correctly reasoned that, "by its terms," section 502(b)(2) applies only to claims involving interest in addition to principal, and that this is appropriate because a note providing for payments of both principal and interest is "fundamentally more valuable" than a note involving the same principal but no interest. *Id.* The court explicitly rejected US Bank's "near-total" but "misplaced" reliance upon *In re Loewen Group Int'l*, explaining that the decision is inapposite because the instruments at issue in *Loewen* were *non*-interest-bearing future obligations. Pet. App. 28-29.

The *Loewen* decision relied upon a series of cases, several of which US Bank cited below and again in the Petition. These cases also are inapposite, and for the same reason: they concern only *non*-interest-bearing future claims. For example, in *PBGC v. Belfance (In re CSC Indus., Inc.)*, 232 F.3d 505, 508 (6th Cir.

2000), the Sixth Circuit considered a claim filed by the Pension Benefit Guaranty Corporation ("PBGC") for benefit payments that PBGC would be making in the future, without interest. PBGC's claim had no interest component and, at the time the debtor filed for bankruptcy, PBGC had not yet actually suffered a loss with respect to the benefit payments that it would be making at a future date. Here, the Claims are interest-bearing and Respondents made their advances well before Oakwood filed for bankruptcy. Unlike PBGC in the *CSC* case, Respondents have already suffered losses in the form of their pre-petition principal outlays. *See also PBGC v. CF&I Fabricators of Utah, Inc. (In re CF&I Fabricators of Utah, Inc.)*, 150 F.3d 1293, 1300 (10th Cir. 1998) (future benefits to be paid by PBGC); *Pereira v. Nelson (In re Trace Int'l Holdings, Inc.)*, 284 B.R. 32, 38 (Bankr. S.D.N.Y. 2002) (debt obligation was for $500,000 in deferred compensation that was payable in 120 monthly installments without interest beginning upon retirement); *Kucin v. Devan*, 251 B.R. 269, 273 (D. Md. 2000) (future retiree benefits); *LTV Steel Co. v. Aetna Cas. & Sur. Co. (In re Chateaugay Corp.)*, No. 94 CIV. 1257 (LMM), 1996 WL 346010, *1 (S.D.N.Y. June 24, 1996) (benefit payments made after petition date); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161, 162 (S.D.N.Y. 1987) (debt obligation was a conditional, one-time reimbursement payment of $392,500, payable without interest).

The Third Circuit found a critical difference between such cases and the instant matter, in which Respondents had bargained for the right to receive interest. As discussed below, discounting was not authorized under the statutory predecessors to section 502(b), except for non-interest bearing obligations. When Congress enacted section 502(b), it deleted any authorization for discounting, and also explained in the legislative history that discounting was not authorized. US Bank has no response beyond the bald contention that the analysis of Respondents and the Third Circuit does not constitute a "reasoned" basis for distinguishing its cases concerning non-interest-bearing future obligations.

The "reasoning" of US Bank and the lower courts also makes no sense, as the following example demonstrates:

Suppose that a bank lends a debtor $100,000 on an unsecured basis (i.e., the bank does not take a lien on collateral to secure repayment of the loan) and that the debtor agrees to repay the principal amount of the loan in installments over time (e.g., $2,000 in principal per month for fifty months). Suppose further that the debtor agrees to pay interest on the outstanding balance of the loan each month at an annual rate of 4%. Suppose finally that the debtor files for bankruptcy the day after taking out the loan, having made no principal or interest payments on the loan. Although the bank would not be entitled to recover any post-petition interest from the debtor, it would be entitled to an allowed claim for the entire $100,000 principal amount of its loan, even though the bank agreed that the debtor could repay the loan in installments over time. The bank would be entitled to an allowed claim for $100,000 because that is what the Bankruptcy Code expressly provides. It would be absurd to suggest that the bank's claim had to be discounted to some lesser amount simply because the bank agreed that the debtor could repay the loan in installments.

Respondents are likewise entitled to an allowed claim for the full, undiscounted amount of their Principal Claims. The lack of a circuit split on the question presented is not surprising, given that the position advanced by US Bank defies logic as well as the governing provisions and policies of the Bankruptcy Code. Because there is no need for the Court to resolve a circuit split on the question presented, the Petition should be denied.

B. The Decision Below Is Fully Consistent With This Court's Precedents.

The Petition should be denied because there is no intolerable conflict between the decision below and this Court's decisions on the same issues. To the contrary, the Third Circuit's decision is entirely consistent with this Court's precedents.

1. The Court's precedents concerning plain-text analysis of Bankruptcy Code provisions mandate that the Principal Claims be allowed in full.

Assuming the truth of its own conclusions, US Bank contends that the word "shall" demonstrates that section 502(b)'s instruction that the court "shall" determine the amount of claims as of the

Petition Date "can only mean to discount claims to present value," Pet. 13, and that the Third Circuit erred by failing to apply the "plain language" of section 502(b), that "the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition," *id.* at 14. US Bank's position is unsound.

a. Under the plain text of section 101(5), the Principal Claims constitute "claims" in their full amounts.

This Court has repeatedly explained that, in construing the Bankruptcy Code, "[t]he starting point . . . is the existing statutory text." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). "[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 7 (2000). The governing provisions of the Bankruptcy Code plainly direct that Respondents hold a claim in the full principal amount advanced in exchange for the B-2 Certificates.

Section 101(5) of the Code defines "claim" to mean any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). This definition is expansive. *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003); *Cohen v. De La Cruz*, 523 U.S. 213, 218 (1998). Similarly, "debt" is defined broadly as "liability on a claim." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990) ("This definition reveals Congress' intent that the meanings of 'debt' and 'claim' be coextensive."). These definitions reflect "Congress' broad rather than restrictive view of the class of obligations that qualify as a 'claim' giving rise to a 'debt.'" *Id.* (citing H.R. Rep. No. 95-595, at 309 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6266 (describing definition of "claim" as the "broadest possible" and noting that the Code "contemplates that all legal obligations of the debtor . . . will be able to be dealt with in the bankruptcy case").

Respondents clearly hold a "right to payment" against Oakwood under the Guarantees and the parties have stipulated to the amount that Oakwood owes in principal shortfalls. This right

to payment is "unsecured" because Respondents have not taken a lien on any collateral to secure Oakwood's payment obligation under its Guarantees, and is "liquidated" and "fixed" because the parties have stipulated to the amount of the principal shortfalls that Oakwood owes and Oakwood is obligated to pay these amounts. *E.g.*, *Stillwater Nat'l Bank & Trust Co. v. Kirtley (In re Solomon)*, 299 B.R. 626, 639 n.55 (10th Cir. BAP 2003) ("[T]he Debtors unconditionally guaranteed the . . . debt and there was no evidence that the Bank would forego collection or enforcement from Debtors. In short, the Debtor's liability under the guaranty was not contingent.").

Respondents' right to payment is legal in nature because it arises in contract (the Guarantees), and is "disputed" because US Bank objected, asserting that the Principal Claims must be discounted. Respondents' right to payment is "unmatured," meaning that, as of the Petition Date, the amounts that Oakwood owes were not yet due (mature) because Oakwood was to pay them in the future as shortfalls arose. *In re Moffat*, 107 B.R. 255, 261 (Bankr. C.D. Cal. 1989) (an obligation "matures" when it "becomes due," or when "no further act of any kind was necessary" in order to trigger the obligation), *aff'd*, 119 B.R. 201 (9th Cir. BAP 1990), 959 F.2d 740 (9th Cir. 1992); BLACK'S LAW DICTIONARY (8th ed., West 2004) (defining "mature" as "to become due").

Section 101(5) makes plain that a right to payment constitutes a "claim" regardless of whether it is matured or unmatured. Thus, even though, outside of bankruptcy, Oakwood would not have paid the principal shortfalls comprising the Principal Claims until they became due at different times in the future, Respondents' unmatured right to payment constitutes a "claim" equal to the full amount of the Principal Claims because section 101(5) clearly includes any unmatured right to payment as part of the claim. Nothing in section 101(5) even remotely purports to discount the amount of a right to payment on the ground that it is unmatured. Respondents thus hold a "claim" for unmatured principal in the full amount of the principal shortfalls.

b. Under the plain text of section 502(b), the Principal Claims must be allowed in full.

JPMorgan filed proofs of claim asserting Respondents' entitlement to the full amount of the Principal Claims. Pursuant to section 502(a), "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." Because US Bank objected, the bankruptcy court was required to resolve the dispute under section 502(b).

Section 502(b) provides that, if an objection to a claim is filed, "the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that [one of the grounds for disallowance set forth in the balance of section 502(b) applies]." It is undisputed that none of the grounds for disallowance set forth in the balance of section 502(b) applies to the Principal Claims. Thus, the bankruptcy court's task under section 502(b) is simple: to determine the amount of the claim as of the Petition Date.

Section 502(b) does *not* say that the principal amount of a claim must be reduced to present value because it is unmatured (i.e., due in future installments). To the contrary, section 502(b) plainly directs the court to determine the amount of the "claim" as of the petition date, meaning that it must establish the claim based on *what* the debtor owes, not *when* the obligation is due. This is necessarily so because, by the express terms of section 101(5), unmatured rights to payments are included in the definition of "claim" and nothing in section 502(b) strips from the claim any right to unmatured principal.

As numerous courts have recognized, the allowable amount of a debt for purposes of section 502 includes any undiscounted principal installments due in the future. This is because, under the Code's broad recognition of virtually every type of claim, the principal amount of the debt that may be due in the future is effectively accelerated by the debtor's bankruptcy filing, irrespective of any acceleration language in the parties' debt instrument. *Nationwide Mut. Ins. Co. v. Optel Inc. (In re Optel Inc.)*, No. 02-2121, 60 Fed. Appx. 390, 394, 2003 WL 1511376, *4 (3d Cir. March 25, 2003); *In re Payless Cashways, Inc.*, 287 B.R.

482, 488 (Bankr. W.D. Mo. 2002); *In re Auto Int'l Refrigeration*, 275 B.R. 789, 813 (Bankr. N.D. Tex. 2002); *In re Mitchell*, 85 B.R. 564, 566 (D. Nev. 1988); *In re Manville Forest Prods. Corp.*, 43 B.R. 293, 297 (Bankr. S.D.N.Y. 1984), *rev'd, in part, on other grounds*, 60 B.R. 403 (S.D.N.Y. 1986). As one court has explained:

> It is a basic tenet of the Bankruptcy Code that "[b]ankruptcy operates as the acceleration of the principal amount of all claims against the debtor." This tenet follows logically from the expansive Code definition of claim," which allows any claim to be asserted against the debtor, regardless of whether such claim is "reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed [or] undisputed . . . ." 11 U.S.C. § 101(4)(A), and from the Code's provision in Section 502 that a claim will be allowed in bankruptcy regardless of its contingent or unmatured status. Such contingent or unmatured claims may be asserted against the debtor despite the provisions of section 362(a)(6), which stays "any act to collect, assess, or recover a claim against the debtor that arose before the filing of the Chapter 11 petition." 11 U.S.C. § 362(a)(6).

Manville, 43 B.R. at 297-98 (citations omitted) (quoted in *Optel*, No. 02-2121, 60 Fed. Appx. at 394).

In sum, under the plain terms of sections 101(5) and 502(b), Respondents are entitled to an allowed claim that includes the full, undiscounted amount of the principal shortfalls due under the Guarantees, notwithstanding that the principal amounts were unmatured on the Petition Date.

c. Section 502(b)'s plain-text instruction that the court determine the "amount" of a claim "as of the date of the filing of the petition" does not authorize discounting.

The filing of a bankruptcy petition initiates an administrative process that requires some temporal point of demarcation in order to facilitate the orderly resolution of the debtor's obligations. The petition date is the pivotal point for claims-allowance purposes.

United States v. Marxen, 307 U.S. 200, 207 (1939); *Sexton v. Dreyfus*, 219 U.S. 339, 344-45 (1911).

By instructing courts to determine the amount of a claim "as of the date of the filing of the petition," section 502(b) simply prescribes a temporal point of demarcation and sets a baseline against which other provisions of the Code operate. For example, while debtors are often obligated to pay interest to creditors on their debt instruments, the longstanding general rule in bankruptcy is that "interest on the debtors' obligations ceases to accrue at the beginning of the proceedings." *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 163 (1946). By setting the petition date as the point from which to determine the amount of a claim, section 502(b), operating in conjunction with section 502(b)(2), gives substance to this rule: Section 502(b) sets the petition date as the baseline reference for determining the amount of the claim and section 502(b)(2) disallows the claim to the extent that "such claim is for unmatured interest." H.R. Rep. No. 595, at 3352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6308 ("Interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph."); *Texas Commerce Bank, N.A. v. Licht (In re Pengo Indus., Inc.)*, 962 F.2d 543, 546 (5th Cir. 1992). Section 502(b)(2) does not itself prescribe the date from which interest is considered to be "unmatured" (and therefore not allowable) because section 502(b) sets the relevant baseline.

As a practical matter, unless section 502(b) prescribed the petition date as the point of demarcation, it would be unclear whether the amount of a claim should be determined from that date or from some other date. Moreover, section 502(b) directs the court to set the *amount* of a claim as of the petition date, not the claim's *value*. Section 502(b) says nothing at all about valuing a claim, discounting a claim, or anything remotely similar. Section 502(b) should not be read to authorize more than what it actually prescribes. The bankruptcy court erred in construing section 502(b) as a broader claims-adjustment mechanism than it actually is. *See Felix Frankfurter, Some Reflections on the Reading of*

Statutes, 47 Colum. L. Rev. 527, 536 (1947) ("One must also listen attentively to what [the statute] does not say.").

2. The Court's precedents concerning contextual analysis of Bankruptcy Code provisions mandate that the Principal Claims be allowed in full.

Congress adopted the original Bankruptcy Code in 1978 after ten years of study. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). The Code was intended to function as a coherent regulatory scheme. Recognizing this, the Court has directed that the Code's provisions should be construed together, taking into account the relationships among the provisions and Congress's choice of language in drafting them. *Timbers*, 484 U.S. at 369-71 ("Statutory construction is a holistic endeavor."); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law") (citations and internal quotation marks omitted); *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936).

a. When Congress intends discounting under the Code, it uses language distinctly different from the text of section 502(b), and Congress did not intend section 502(b) to authorize discounting.

When Congress intends that an amount be discounted to present value, it says so expressly, directing the court to determine the "value" of the amount as of a particular point in time. For example, Congress has provided in section 1325(a)(5)(B)(ii) that, in considering the sufficiency of future distributions a debtor proposes to make to a secured creditor under a chapter 13 plan, the court must determine "the *value*, as of the effective date of the plan, of [the] property to be distributed under the plan." (emphasis supplied). This text requires the court to "discount to present value" the stream of future payments proposed under the debtor's plan to ensure that it has a value that equals or exceeds the current value of the secured creditor's claim. *Till v. SCS Credit Corp.*, 541 U.S. 465, 468 (2004) (plurality); *Assoc. Commercial Corp. v. Rash*, 520 U.S. 953, 962 (1997); *Rake v. Wade*, 508 U.S. 464, 472

n.8 (1993); H.R. Rep. No. 95-595 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6364.

In *Till*, this Court further explained that "the Bankruptcy Code includes numerous provisions that, like [section 1325(a)(5)(B)(ii)], require a court to 'discoun[t] . . . [a] stream of deferred payments back to the[ir] present dollar value.'" 541 U.S. at 474 & n.10 (quoting *Rake*, 508 U.S. at 472 n.8 and listing provisions). Conspicuously absent from this list is section 502(b). This is not surprising. In each of these enumerated provisions, Congress has expressly directed the court to determine the "value" of some amount as of a particular date and, as noted, the term "value" as used in these provisions means "present value." *Till*, 541 U.S. at 469 n.4. In contrast, section 502(b) says nothing about determining the "value" of a claim but merely directs the court to "determine the *amount* of [the creditor's] claim . . . as of the date of the filing of the petition." (emphasis supplied); *see* 11 U.S.C. § 1129(a)(9)(A) ("amount"), § 1129(a)(9)(B)(ii) ("amount"). This choice of language is dispositive.

When Congress employs particular language in a provision of the Bankruptcy Code, it is presumed to act deliberately, and Congress's use of different terms in different provisions also is presumed to be deliberate. *NextWave*, 537 U.S. at 302; *Davenport*, 495 U.S. at 560-61; *Bates v. United States*, 522 U.S. 23, 29-30 (1997). As discussed, Congress has directed in section 101(5) that a "claim" includes any and all unmatured installments of principal. If Congress had intended courts to reduce the unmatured principal amount of a claim by discounting the unmatured portion to present value, it would have directed the court to do so by determining the "value" of the claim. Conversely, that Congress did not do so means that it did not intend courts to discount claims. *E.g.*, *NextWave*, 537 U.S. at 302; *Toibb v. Radloff*, 501 U.S. 157, 162 (1991); *Davenport*, 495 U.S. at 560-61

b. The bankruptcy court's discounting rule renders section 502(b)(2) superfluous.

Engrafting a discounting requirement onto section 502(b) would violate a well-established canon of statutory construction by rendering superfluous another section of the very same provision.

Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 112 (1991). As noted, section 502(b)(2) requires that a claim must be disallowed "to the extent that . . . such claim is for unmatured interest." *Vanston*, 329 U.S. at 163. The bankruptcy court disallowed the postpetition (unmatured) interest component of the Claims. But if section 502(b) itself required discounting, it would already eliminate a claim for postpetition (unmatured) interest because the very process of discounting to present value reduces a claim by an imputed rate of interest necessary to reflect the present value of payments due in the future. *St. Louis Southwestern R. Co. v. Dickerson*, 470 U.S. 409, 412 (1985) ("it is self-evident that a given sum of money in hand is worth more than the like sum of money payable in the future" and "the method of calculating present value should take into account . . . the rate of interest"). As one commentator has explained:

> The concept of present value is really quite simple and can be easily illustrated. Assume that A wants to borrow money from B, repayable at a future date. B is willing to make the loan, but feels that, considering the risks involved, he is entitled to a 10 percent annual rate of return. This being the case, how much money will he advance to A on A's note for $10 payable one year hence? The answer is $9.09, because the $10 paid next year provides interest of $.91, which is 10 percent of a $9.09 loan. Thus, $9.09 is the present value of $10 payable one year hence at a discount rate of 10 percent.

Sumner N. Levine, *Financial Analysts' Handbook I*, 140 (1975); *see Rake*, 508 U.S. at 472 n.8; 3 *The New Palgrave Dictionary of Money & Finance*, 172 (Peter Newman et al. eds., 1992) (present value means "the summed discounted value of the stream of revenues which [an] asset generates" as to which "[t]he discount factor will be that determined by the interest rate over the relevant period").

By definition, then, the process of discounting a right to payment to present value eliminates any interest recovery because interest is the measure of the difference between the value of the future amount to be paid and the present value of the same amount.

Accordingly, if section 502(b) directs present-value discounting of unmatured payment obligations, section 502(b)(2) is unnecessary. This Court has instructed that "an interpretation of a congressional enactment which renders superfluous another portion of that same law" should be rejected. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) (internal quotation marks and citation omitted).

3. The decision below is consistent with this Court's precedents proscribing judicial re-drafting of statutes and defining the power of bankruptcy courts.

Courts lack "carte blanche to redraft statutes in an effort to achieve what Congress is perceived to have failed to do." *United States v. Locke*, 471 U.S. 84, 95 (1985). Moreover, although bankruptcy courts are courts of equity, "[w]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). This Court has restricted the ability of federal courts to establish categorically novel methods of treating claims under the Bankruptcy Code. *United States v. Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 228-29 (1996); *United States v. Noland*, 517 U.S. 535, 540 (1996). The bankruptcy court lacked the authority to engraft a discounting feature onto section 502(b). It is for Congress, not the courts, to specify such a procedure. Because Congress has not done so in section 502(b), the bankruptcy court erred in ruling that the Principal Claims must be discounted.

4. The decision below is consistent with this Court's precedents concerning the fundamental bankruptcy policy of equality of distribution.

This Court has long recognized the ancient policy underlying the Bankruptcy Code of equality of distribution among similarly situated creditors. *E.g.*, *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991); *Young v. Higbee*, 324 U.S. 204, 210 (1945). The bankruptcy court's discounting rule would ensure that Respondents would receive far less than similarly situated claimants.

The process of allowing and paying claims in bankruptcy is designed to achieve finality, and one reason why the filing of a bankruptcy case operates as an automatic acceleration of all the

debtor's outstanding indebtedness is to facilitate this process and enable all claims to be treated together and paid at a single point in time. To accomplish this, all of the debtor's liabilities are tallied and distributions are made ratably on allowed claims according to the availability of funds and each claim's relative payment priority. *Vanston*, 329 U.S. at 161.

Obviously, a debtor may have many different kinds of debt obligations. For example, the debtor may be liable to a tort victim for an undetermined amount of damages; to a bank for an unmatured loan obligation; and to a tax collector for taxes payable in the future. In determining the amount of the tort creditor's claim, the court would not discount to present value the principal amount of the claim simply because it may take a year or more to determine the amount of the damages through the completion of a judicial procedure. Where the damages have already been incurred, the amount of the damages forms the basis of the tort creditor's claim, regardless of the fact that the damages might not be paid until some point in the future. Likewise, the bank would be entitled to assert a claim for the full principal balance of its loan and the tax collector would be entitled to assert a claim for the full amount of any taxes. Calculating claims in this way, without discounting based on when the claim might mature, fulfills both the command of section 502(b) and the policy of equality of distribution because it ensures that amounts owed as of the petition date will be treated the same, regardless of when payment on a particular claim might be due.

The bankruptcy court reduced the Principal Claims to an amount far less than the principal amount of Respondents' losses, with the result that Respondents would face a distinct disadvantage as compared to other creditors who will receive distributions from Oakwood's bankruptcy estate based on the full, undiscounted principal balance of their claims. This result is obviously unequal and violates the policy of equality of distribution.

5. The decision below comports with this Court's precedents concerning the need to avoid administrative burdens and to promote efficiency in bankruptcy.

A principal reason why bankruptcy law cuts off claims for unmatured interest after the debtor files for bankruptcy is to *avoid* the administrative burden of calculating and recalculating claims based on the accrual of interest after the petition date. *Vanston*, 329 U.S. at 164. The bankruptcy court's discounting rule is particularly anomalous because it requires the imposition of an even more complex administrative burden.

In order to discount the Principal Claims, the bankruptcy court had to determine an appropriate discount rate. Obviously, the Guarantees do not define contractually how to discount the *principal* amount of the Claims because this is not an ordinary commercial concept. Accordingly, the bankruptcy court was required to consider conflicting expert testimony on how this might be accomplished. The court's consideration of such conflicting expert testimony, however, is precisely the sort of administrative burden that bankruptcy law seeks to avoid. Indeed, bankruptcy law is particularly sensitive to such burdens, given the inherent lack of resources present in most bankruptcy cases and the fact that Congress intended bankruptcy administration to be expeditious and inexpensive. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 517 n.1 (1984). Had Congress intended courts to engage in an expensive and complex discounting inquiry, it would have authorized it. That Congress has not done so demonstrates that it is unwarranted.

6. The decision below comports with this Court's precedents proscribing windfalls in bankruptcy.

A longstanding policy of bankruptcy law is to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy." *Butner v. United States*, 440 U.S. 48, 55 (1979). The bankruptcy court's discounting rule would generate a windfall for other creditors precisely because it inequitably strips away the vast majority of the Principal Claims, with the result that Respondents would receive recoveries based on claim amounts that reflect a small fraction of their actual losses, while other creditors

would enjoy recoveries based on the full, undiscounted amount of their principal claims. Nothing in the Bankruptcy Code sanctions this and the Third Circuit properly rejected the rule as inequitable.

C. The Third Circuit Correctly Decided The Question Presented.

The Petition should be denied because the decision below correctly decided the question presented, as demonstrated by the foregoing discussion and by the following additional points.

1. The decision below is supported by prior practice under the predecessors to section 502.

"[W]hen Congress amends the bankruptcy laws, it does not write on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (internal quotation marks and citation omitted). The Court has also stated: "We . . . 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.'" *Cohen*, 523 U.S. at 221 (quoting *Davenport*, 495 U.S. at 563); *see CF&I*, 518 U.S. at 221; *Duparquet*, 297 U.S. at 218. Conversely, when Congress adopts a provision of the Code that eliminates an authorization under prior law, it is presumed to have acted deliberately. *Lamie*, 540 U.S. at 538.

The immediate statutory predecessor to section 502(b) was section 63 of the Bankruptcy Act of 1898, 11 U.S.C. § 103 (repealed 1979), which provided in relevant part:

> Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability . . . absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest . . . .

Like section 502, section 63 set the petition date as the baseline reference for claims-allowance purposes. Section 63 made plain that a creditor was entitled to the principal amount of its claim "whether then payable or not"; was entitled to interest accrued "at the time of the filing"; and the *only* exception to

allowance of the full principal amount of the debt was for *non*-interest-bearing obligations, as to which the section prescribed "a rebate of interest upon such as were not then payable *and did not bear interest*." (emphasis supplied). *See* 3A COLLIER ON BANKRUPTCY, ¶ 63.16 at 1856-57 (14th ed. 1972) ("[Section 63] computes interest as of the day of the filing of the petition and stops it at that date, and this computation has been carried so far as to require a rebate of interest, presumably at the legal rate, on *non-interest-bearing debts* that have not matured when bankruptcy intervenes, for the reason that bankruptcy serves to accelerate the due date.") (emphasis supplied). The predecessor to section 63, section 19 of the Act of 1867 also limited discounting to non-interest-bearing obligations. *See* Act of 1867, ch. 176, 14 Stat. 517 (1867) (repealed 1878); *In re Orne*, 18 F. Cas. 10,581 (S.D.N.Y. 1867) (recognizing that section 19 required discounting for non-interest-bearing obligations, not interest-bearing debts).

When Congress enacted section 502(b), it did not alter the prior practice of refusing to discount the principal amount of an unmatured interest-bearing obligation. To the contrary, Congress eliminated the only form of discounting that sections 63 and 19 permitted by refusing to reauthorize the discounting of unmatured non-interest-bearing debts. That Congress retained the substance of sections 63 and 19 in so far as they establish the petition date as the baseline for claims-allowance purposes, but *eliminated* all reference to "rebates of interest" on unmatured *non*-interest bearing obligations, demonstrates that Congress intended to eliminate what it did not retain. *Lamie*, 540 U.S. at 538.

2. The decision below is supported by the legislative history to section 502(b).

The conclusion that Congress intended to end any practice of discounting the principal amount of an unmatured obligation is confirmed by the legislative history to section 502(b). As explained in the House Report:

> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy

> operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to the contractual interest rate on that claim. *Thus, this paragraph does not cause disallowance of claims that have not been discounted to a present value because of the irrebuttable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*

H.R. Rep. No. 595, at 3352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6308 (emphasis supplied); *see* S. Rep. No. 989, at 62-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 5848 (same). The foregoing demonstrates that Congress (a) intended the automatic acceleration of the principal amount of all claims upon the petition date; and (b) did not intend that the principal amount of a claim be discounted.

3. The decision below is mandated by settled bankruptcy law concerning guaranty claims.

For well over a century, every federal court to have addressed the issue has adhered to a uniform rule: a creditor holding a guaranty claim is entitled to assert the full amount of the claim against the bankrupt guarantor at the time the guarantor commences its bankruptcy case. Further, the creditor may assert the full amount of the claim without regard to any payments the creditor receives or may receive from any other party also liable for the debt guaranteed by the guarantor. *E.g.*, *Ivanhoe Bldg. & Loan Ass'n v. Orr*, 295 U.S. 243, 245 (1935); *Security Nat'l Bank v. Gessin (In re Gessin)*, 668 F.2d 1105, 1107 (9th Cir. 1982); *Ireton v. Lincoln Nat'l Bank*, 300 F. 316, 317-18 (6th Cir. 1924); *In re Realty Assocs. Sec. Corp.*, 66 F. Supp. 416, 424 (E.D.N.Y. 1946), *aff'd in part, mod. in part*, 163 F.2d 387 (1947); *In re F.W.D.C., Inc.*, 158 B.R. 523, 528 (Bankr. S.D. Fla. 1993).

The bankruptcy court's conclusion that the Principal Claims had to be discounted to reflect that Oakwood was obligated to pay principal shortfalls in the future was rejected by each of these cases. Regardless of whether the guarantor may be obligated outside of bankruptcy to make payments in the future, or whether

others may satisfy the underlying debt in part at some future date, the creditor is entitled to assert the *full* amount of the guaranteed obligation against the guarantor at the time the guarantor files for bankruptcy, and the bankruptcy court must allow the full amount. The concept is one of automatic acceleration.

D. The Petition Presents No Issue Of Extraordinary Public Importance Warranting This Court's Intervention.

The Petition fails to demonstrate the existence of an issue of extraordinary public importance. In truth, the only interest at stake here is US Bank's interest in increasing the amount of its share of the proceeds of Oakwood's bankruptcy estate, at the expense of Respondents. For this reason too, this Court's intervention is unwarranted and the Petition should be denied. *E.g.*, *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923) ("importance" as a consideration in determining whether certiorari is warranted relates to the importance of the issues "to the public as distinguished from" importance to the particular parties involved).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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